No. 93-497

Supreme Court, U.S.
FILED
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1992

JOHN McGINNIS,

Petitioner,

v.

STATE OF MARYLAND,

Respondent.

PETITION FOR WRIT OF CERTIORARI FOR THE
CIRCUIT COURT FOR DORCHESTER COUNTY, MARYLAND

PETITION FOR WRIT OF CERTIORARI

WALLER S. HAIRSTON,
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THE DAILY RECORD COMPANY, 11 EAST SARATOGA STREET, BALTIMORE, MD 21202

No.

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1992

Petition for Writ of Certiorari

Petitioner, John Mcginnis

Question Presented

Is Courts and Judicial Proceedings Article, Section 12-302(a), Annotated Code of Maryland, unconstitutional when interpreted and applied, as herein below, to deny a criminal Defendant the right of appeal from a failure to afford a speedy trial?

Parties of Interest

Petitioner:

John McGinnis
109 Choptank Terrace
Cambridge, Maryland 21613

Respondent:

State of Maryland
c/o J. Joseph Curran, Jr., Esquire
Attorney General
200 Saint Paul Place
Baltimore, Maryland 21202

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Statement of Grounds

By Order dated February 23, 1993, the Court of Special Appeals of Maryland denied Petitioner the right to appeal his criminal conviction in a de novo criminal prosecution in which Petitioner timely raised the issue of lack of a speedy trial.

By Order dated June 24, 1993, the Court of Appeals of Maryland denied Petitioner's timely filed Petition for Writ of Certiorari by which review of the violation of Petitioner's right to speedy trial was prayed. Jurisdiction to review

Petitioner's grievance is vested in this Honorable Cour y 28 USC, Section 1257.

TEXT OF CITATIONS

U.S. CONSTITUTION

[AMENDMENT V]

[Rights of Accused in Criminal Proceedings]

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Milia, when in actual service in time of War or public danger, nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property

be taken for public use, without just compensation.

[AMENDMENT VI]

[Right to Speedy Trial, Witnesses, etc.]

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the Assistance of Counsel for his defense.

MARYLAND DECLARATION OF RIGHTS

ARTICLE 21. Rights of accused: indictment; counsel; confrontation; speedy trial; impartial and unanimous jury.

That in all criminal prosecutions, every man hath a right to be informed of the accusation against him; to have a copy of the Indictment, or charge in due time (if required) to prepare for his defence; to be allowed counsel; to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath; and to a speedy trial by an impartial jury, without whose unanimous consent he ought not to be found guilty.

ARTICLE 23. Due process.

That no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land.

MARYLAND ANNOTATED CODE, COURTS & JUDICIAL PROCEEDINGS ARTICLE

§ 12-301. Right of appeal from final judgments Generally.

Except as provided in § 12-302, a party may appeal from a final judgment entered in a civil or criminal case by a circuit court. The right of appeal exists from a final judgment entered by a court in the exercise of original, special, limited, statutory jurisdiction, unless in a particular case the right of appeal is expressly denied by law. In a criminal case, the defendant may appeal even though imposition or execution of sentence has been suspended. (An. Code 1957, art. 5 §§ 1-3, 5, 6, 8, 12, 13, 19; 1973, 1st Sp. Sess. ch. 2 § 1; 1989, ch. 584)

§ 12-302. Same - Exceptions.

(a) Unless a right to appeal is expressly granted by law, § 12-301 does

not permit an appeal from a final judgment of a court entered or made in the exercise of appellate jurisdiction in reviewing the decision of the District Court, an administrative agency, or a local legislative body.

(b) Section 12-301 of this subtitle does not apply to appeals in contempt cases, which are governed by §§ 12304- and 12-402 of this title.

(c) In a criminal case, the State may appeal as provided in this subsection.

(1) The State may appeal from a final judgment granting a motion to dismiss or quashing or dismissing any indictment, information, presentment, or inquisition.

(2) The State may appeal from a final judgment if the State alleges that the trial judge failed to impose the

sentence specifically mandated by the Code.

(3) (i) In a case involving a crime of violence as defined in § 643B of Article 27, and in cases under §§ 286 and 286A of Article 27, the State may appeal from a decision of a trial court that excludes evidence offered by the State or requires the return of property alleged to have been seized in violation of the Constitution of the United States, the Constitution of Maryland, or the Maryland Declaration of Rights.

(ii) The appeal shall be made before jeopardy attached to the defendant. However, in all cases the appeal shall be taken no more than 15 days after the decision has been rendered and shall be diligently prosecuted.

(iii) Before taking the appeal,

the State shall certify to the court that the appeal is not taken for purposes of delay and the evidence excluded or the property required to be returned is substantial proof of a material fact in the proceeding. The appeal shall be heard and the decision rendered within 120 days of the time that the record on appeal is filed in the appellate court. Otherwise, the decision of the trial court shall be final.

(iv) If the State appeals on the basis of this paragraph, and if on final appeal the decision of the trial court if affirmed, the charges against the defendant shall be dismissed in the case from which the appeal was taken. In that case, the State may not prosecute the defendant on those specific charges or on any other related charges arising out of

the same incident.

(v) Pending the prosecution and determination of an appeal taken under paragraph (1) or (3) of this subsection, the defendant shall be released on personal recognizance bail, the trial court shall subject the defendant to the penalties provided in Article 27, §12B.

(vi) If the State loses the appeal the jurisdiction shall pay the costs related to the appeal, including reasonable attorney fees incurred by the defendant as a result of the appeal.

(d) Section 12-301 does not permit an appeal from the decision of the judges of a circuit court sitting in banc pursuant to Article IV, § 22 of the Constitution, if the party seeking to appeal is the party who moved to have the point or question reserved for consideration of the

court in banc.

(e) Section 12-301 does not permit an appeal from a final judgment entered following a plea of guilty in a circuit court. Review of such judgment shall be sought by application for leave to appeal.

(f) Section 12-301 of this subtitle does not permit an appeal from the order of a sentence review panel of a circuit court under Article 27, §§ 645JA through 645JG of the Code, unless the panel increases the sentence. (An Code 1957, art. 5, §§ 1.14; 1973, 1st Sp. Sess. ch 2. § 1:1976, ch. 49, § 1:1982, ch. 493 1983, ch. 295; 1984, ch. 255; 1989, ch. 5 § 1; chs. 573, 584, 806.) § 12-401. Right of Appeal generally.

(a) Civil and criminal cases. - A party in a civil case or the defendant in a criminal case may appeal from a final

judgment entered in the District Court. In a criminal case, the State may appeal from a final judgment if the State alleges that the trial judge failed to impose the sentence specifically mandated by the Code. In a criminal case, the defendant may appeal even though imposition or execution of sentence has been suspended.

(b) Municipal infraction. - A defendant who has been found guilty of a municipal infraction, as defined in Article 23A, § 3 (b) (1) of the Code or a Code violation under Article 27, § 403B of the Code, may appeal from the final judgment entered in the District Court. The costs and procedures for taking the appeal shall be as provided for appeals from criminal cases in the District Court. Except, however, as provided in subsection (d) of this section, the appellate court

shall docket and hear the appeal as a civil appeal from the District Court.

(c) Time for appeal. - (1) Except as provided in paragraph (2), an appeal shall be taken by filing an order for appeal with the clerk of the District Court within 30 days from the date of the final judgment from which appealed.

(2) If the final judgment was entered in a case filed under § 8-332, § 8-401, § 14-109 of the Real Property Article of the Code, the order for appeal shall be filed within the time prescribed by the particular section.

(d) De novo and on record appeals. - In a civil case in which the amount in controversy exceeds $2,500 exclusive of interest, costs and attorney's fees if attorneys fees are recoverable by law or contract, and in any case in which the

parties so agree, an appeal shall be heard on the record made in the District Court. In every other case, including a criminal case in which sentence has been imposed or suspended following a plea of nolo contendere or guilty, and an appeal in a municipal infraction of Code violation case, an appeal shall be tried de novo.

(e) Right to jury trial. - In a criminal appeal that is tried de novo, there is no right to a jury trial unless the offense charged is subject to a penalty of imprisonment or unless there is a constitutional right to a jury trial for that offense. (An. Code 1957, art. 5, §; art. 26, § 156; 1973, 1st Sp. Sess. ch 2, § 1;1974, ch. 687, § 13; 1976, ch. 49, § 1; 1978, ch. 735; 1980, ch. 298; 1981, ch. 657, 1982 512, 844; 1984, ch. 255; 1987, ch. 314.)

ANNOTATED CODE OF MARYLAND, CRIMINAL ARTICLE 27

§ 591. Trial date.

(a) The date for trial of a criminal matter in a circuit court;

(1) Shall be set within 30 days after the earlier of:

(i) The appearance of counsel; or

(ii) The first appearance of the defendant before the circuit court, as provided in the Maryland Rules; and

(2) May not be later than 180 days after the earlier of those events.

(b) On motion of a party or on the court's initiative and for good cause shown, a county administrative judge or a designee of that judge may grant a change of the circuit court trial date.

(c) The Court of Appeals may adopt additional rules of practice and procedure

for the implementation of this section in circuit court. (1971, ch. 212; 1980, ch. 378 1982, ch. 820, § 1;1987, ch. 222.)

MARYLAND RULES OF PROCEDURE

Rule 4-271. Trial date

(a) Trial date in Circuit Court. - (1) The date for trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213, and shall be not later than 180 days after the earlier of those events. When a case has been transferred from the District Court because of a demand for jury trial and an appearance of counsel entered in the District Court was automatically entered in the circuit court pursuant to Rule 4-214 (a) the date of the

appearance of counsel for purposes of this Rule is the date the case was docketed in the circuit court. On motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date.

(2) Upon a finding by the Chief Judge of the Court of Appeals that the number of demands for jury trial filed in the District Court for a county is having a critical impact on the efficient operation of the circuit court for that county, the Chief Judge by Administrative Order, may exempt from this section cases transferred to that circuit court from the District Court because of a demand for jury trial.

(b) Change of Trial Date in District Court. The date for trial in the District Court may be changed on motion of a party,

or on the court's initiative, and for good cause shown.

(Amended Apr. 7, 1986, effective July 1, 1986; June 3, 1988, effective July 1, 1988; Mar 23, 1989, effective July 1, 1989.)

Statement of Case

In August of 1991 Petitioner was charged by Dorchester County, Maryland with a violation of a Housing Code provision, a criminal misdemeanor. Petitioner was thereafter tried in the District Court for Dorchester County where he was found guilty and fined.

Petitioner noted a timely appeal from the District Court to the Circuit Court for Dorchester County, Maryland to which the record was transmitted on January 3, 1992. (App. 1). Under provisions of Courts & Judicial Proceedings Article,

Section 12-401(d), Annotated Code of Maryland, the ensuing Circuit Court proceedings were conducted de novo.

The Docket Entries (App. 1) memorialize the following chronology of facts material to this Petition:

Day 1

February 28, 1992	Initial appearance of Petitioner through counsel

Day 95

June 2, 1992	Trial date
June 2, 1992	Postponement at request of State (Warren, J.)

Day 151

July 28, 1992	Reassigned trial date
July 28, 1992	General postponement by court because of conflicting jury trial (Warren, J.)

Day 163

August 10, 1992	Notice of reassignment of trial to September 29, 1992

Day 214

September 29, 1992 Trial (Warren, J.)

The records of the Administrative Office of the Courts (Maryland) reflect that the Honorable Richard D. Warren was not the Administrative Judge for the Circuit Court for Dorchester County, nor a designee for the purposes of postponing a trial date past 180 days for cause under authority of Section 591(2) (b), Article 27, Annotated Code of Maryland, either on July 28, 1992 when he generally postponed the trial, or on September 29, 1992 at trial on the 214th day when he purported to retroactively find good cause for his own prior postponement on July 28, 1992.

At trial on September 29, 1992, the 214th day following initial appearance, a motion was made (App. 2,4) on behalf of Petitioner to dismiss for want of a speedy

trial as guaranteed by Amendments V and VI, Constitution of the United States, Articles 21 and 23, Maryland Declaration of Rights, Article 27, Section 591, Annotated Code of Maryland, Rule 4-271, Maryland Rules of Procedure. Petitioner's Motion to Dismiss was denied and he was found guilty and fined. (App. 2,6,7).

Petitioner, aggrieved by the denial of his constitutional guarantee filed an Order for Appeal to the Court of Special Appeals of Maryland under Section 12-301, Courts and Judicial Proceedings Article, Annotated Code of Maryland. By Order of the Court of Special Appeals dated February 23, 1993, (App. 8) Petitioner's appeal was transferred to the Court of Appeals under authority of Section 12-302(a) Courts and Judicial Proceedings Article, Annotated Code of Maryland,

Maryland Rule 8-132.

Thereafter, in response to Petitioner's timely Petition for Writ of Certiorari to the Court of Appeals of Maryland, the Order of June 24, 1993 (App. 9) was filed denying the Petition and effectively affirming the determination that a criminal Defendant in a de novo proceeding has no right of appeal of a constitutional issue raised for the first time in the de novo proceedings.

Argument

In the matter of State v. Frazier, 298 Md 422, 470 A2d 1269 (1984), Judge Eldridge, speaking for the Court of Appeals, (Maryland) at page 426 and 429 said:

> "Art. 27, § 591, was enacted by ch. 212 of the Acts of 1971, and Rule 746 (4-271) was promulgated in 1977 to implement § 591. The statute and the rule, applicable

to criminal cases in the circuit courts, require that a trial date be set which shall be later than 180 days after the appearance of counsel or the arraignment of the defendant, whichever shall first occur. Under § 591 and Rule 746, a postponement of the trial date must be made or approved by the administrative judge or a judge designated by him and only for good cause shown.

Soon after § 591 was enacted, but prior to the adoption of Rule 746, it was held in Young v. State, 15 Md. App. 707, 292 A.2d 147, summarily aff'd 266 Md. 438, 294 A.2d 467 (1972), that the requirements of § 591 were only "directory" and not mandatory. Seven years later, however, in State v.Hicks, supra, we overruled the Young case, held that the time period for trying a circuit court criminal case was mandatory, and held that if the case was not tried within that period and there was no postponement of the trial date complying with § 591 and Rule 746, dismissal of the criminal charges is ordinarily the appropriate sanction.

x x x x x x x x x

Three years after Hicks, in Goins v. State, supra, this Court reiterated that dismissal

was the appropriate sanction if a circuit court criminal case was not tried within the 180-day time period, and if there was no order by the administrative judge, based on good cause, postponing the trial beyond the 180-day deadline, and if the defendant did not seek or expressly consent to a trial date in violation of § 591 and Rule 746. Under such circumstances, dismissal would be the appropriate sanction even if the delay may have been for the defendant's benefit, or the defendant may have engaged in dilatory conduct, or the prosecution may have been free of fault. 293 Md. at 100, 106-109, 112, 442 A.2d 550. We repeated in Goins that § 591 and Rule 746 were not intended to be codifications of constitutional speedy trial analysis. Id. at 109, 442, A.2d 550.

In the Goins opinion, we reaffirmed that the State has the duty of bringing the defendant to trial, that the defendant has no duty to bring himself to trial, and that, therefore, the defendant has no obligation to seek a postponement under § 591 and Rule 746. 293 Md. at 109-110, 442 A.2d 550."

The pertinent portions of the record at trial level are confined to the Docket Entries (App. 1-3) and the Transcript (App. 4-8) when the Court denied Defendant's Motion to Dismiss (App. 9) for lack of a speedy trial.

The Docket Entries reveal the following chronology:

February 28, 1992	Initial Appearance by Counsel
June 2, 1992	Trial Date
June 2, 1992	Postponement at Request of State
July 28, 1992	Reassigned Trial Date
July 28, 1992	General Postponement Because of conflicting jury trial
August 8, 1992	Notice of Reassignment of Trial Date
September 29, 1992	Trial

On July 28, 1992, when Judge Richard D. Warren continued the proceeding due to a jury trial in progress (App. 2), one

hundred fifty one days had expired since Defendant's initial appearance through counsel. On August 10, 1992 when the State and Defendant were given notice of the reassigned trial date of September 29, 1992 one hundred sixty three days had expired since initial appearance, and the new trial date was then scheduled two hundred and fourteen days after initial appearance.

The trial record contains no evidence, or even a suggestion, that Judge Warren made any contemporaneous determination or finding that his general continuance on July 28, 1992 was based on good cause for extending the trial date beyond the mandated 180 days, and the official records of the Administrative Office of the Courts (Maryland) reflects that the Honorable Donald Johnson was, and

remains, Administrative Judge for Dorchester County, not the Honorable Richard D. Warren.

The trial court record is also without evidence that the State, upon receiving notice dated August 10, 1992 assigning a trial date beyond the mandated 180 days, made any move or effort to advance the trial date, or obtain an order from the Administrative Judge finding good cause for the postponement beyond the mandated 180 days. This failure violated the affirmative duty of the State's Attorney to comply with Article 27 with § 591 and Rule 4-271. State v. Robertson, 72 Md. App. 342, 350 529 A2d 847 (1987). Clearly, as was recognized by the Court of Appeals in Goins v. State, 293 Md 97, 442 A2d 550 (1982), the Defendant has no duty to bring himself to trial. At trial on

September 29, 1992, well beyond the mandated 180 days, Judge Richard D. Warren, not the Administrative Judge, or shown to be his designee, said:

> "the case was rescheduled for trial on July 28th, was continued at that time because the Court was unable to get to the case because there was a jury trial that was in progress, and, apparently, not anticipated to be completed. I don't know which case that was, but the Court finds that was good cause for continuance, and that the resetting of the case within 60 days thereafter was with good cause." (App.)

Judge Warren was not acting in compliance with Article 27, § 591 or Rule 4-271. He was not shown to be the Administrative Judge, or his designee, nor was Judge Warren, at trial, reviewing and passing on the sufficiency of good cause found by the Administrative Judge incident to an earlier postponement setting a trial date beyond the mandated 180 days, but his

determination on the record that just cause existed back on July 28, 1992, when he himself had generally continued the case, was no more than an effort to retrospectively cure his own earlier error. Calhoun v. State, 299 Md. 1, 472 A2d 436 (1984). In the Calhoun case, the Court of Appeals said that neither an appellate court nor a trial judge ruling on a Motion to Dismiss for failure to bring a case within 180 days could make a de novo determination of good cause for postponement and, upon finding of good cause, excuse the State's noncompliance with 180 day rule. Purported ratification by one not even the Administrative Judge, long after trial had already been postponed beyond 180 days within which Defendant should be brought to trial after initial appearance, does not constitute

compliance with Article 27 § 591 and Maryland Rule 746. In a footnote of the Calhoun case it points out that other jurisdictions as well require that the State must show that a continuance was granted during the 180 day statutory period for one of the authorized reasons, 299 Md. 9 footnote 4.

The State had two burdens pertaining to Defendant's right to a speedy trial. The State was obligated to obtain a trial date within 180 days, which it failed to do. Having failed, as aforesaid, the State then had the obligation, and burden, to place in the record evidence of compliance with Article 27, § 591, and Rule 4-271, at the time of postponement beyond 180 days, which it also failed to do.

Clearly, the primary issue is whether a criminal Defendant is entitled to a speedy trial in a de novo appeal from the District Court. In this proceeding the speedy trial issue did not arise in the District Court and was not, therefore, under appellate "review" in the Circuit Court. This issue originated in the Circuit Court, and Petitioner was denied a right of appeal of this issue by the current interpretation of Courts and Judicial Proceeding Article, Section 12-302(a) (State v. Monroe, 82 Md. App. 65, 67, 570 A2d 338 (1990). This interpretation results, in this case, in a denial of a fundamental right of due process under the U.S. Constitution and the Maryland Declaration of Rights, and a violation of Article 27, § 591, Annotated Code of Maryland and Rule 4-271, Maryland

Rules. (State v. Frazier, 298 Md. 422 1984).

Relying on Courts and Judicial Proceedings Article, Section 12-302(a), the Court of Special Appeals denies appellate jurisdiction over all Circuit Court cases arising from District Court appeals whether they were heard on the record or de novo in the Circuit Court. This interpretation, in addition to denying the right to a direct appeal of constitutional issues arising originally in the Circuit Court as hereinabove shown, also creates a conflict with prior holdings. For example, The Court of Appeals of Maryland, in Hardy v. State, 279, Md. 489, 369 A2d 1043 (1977) said at 493:

> "This Court has consistently treated de novo appeals as wholly original proceedings, that is, as if no

> judgment had been entered in the lower court." (Emphasis supplied).

and at 494, 495:

> "Consequently, by providing in § 12-401(c) of the Courts and Judicial Proceedings Article that appeals from the District Court in criminal cases "shall be tried de novo", the legislature intended that the appeal be treated as an original Circuit Court proceeding [with a right to a jury trial]."

In the matter of Stanton v. State, 290 Md. 245 (1981), the same Court again said at 248:

> "This Court has consistently treated de novo appeals as wholly original proceedings, that is, as if no judgment had been entered in the lower court." (Emphasis supplied)

The Court of Special Appeals of Maryland, in Pinkett v. State, 30 Md. App. 458, 352 A2d 358 (1976) said, at 468:

> "Md Rule 1314a. concerning appeals from the District Court declares: "Where an appeal is to be heard de novo, it shall be

tried according to the Rules of Procedure governing cases instituted in the appellate court,..."

and at 469:

> "The de novo trial washes out the trial in the District Court, but not the basis for it. (Emphasis supplied)

It is most apparent that to apply 12-302(a) to de novo appeals which are not ".... reviewing the decision of the District Court..." to deny right of appeal of constitutional issues arising for the first time in the de novo action is to violate the guarantees of federal and state mandate.

A ruling by this Honorable Court is imperative to avoid a continued privation of the constitutional rights of criminal Defendants before Maryland Courts. Maryland practice under the demonstrated facts is in direct contradiction of the holding of this Honorable Court in Klopfer

v. North Carolina, 386 US 213, 18LEd 2d 1, 87 Sct. 988 where Mr. Justice Steward, speaking for this Court affirmed that, by virtue of the Fourteenth Amendment, the Sixth Amendment Right to a Speedy Trial is enforceable against the States as "one of the most basic rights preserved by our Constitution."

Because the State of Maryland has failed to follow the constitutional mandate of a right to a speedy trial and failed to provide a right of appeal as of right on constitutional issues on a de nova trial, this Writ of Certiorari is the litigants only remaining option.

Respectfully submitted,

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Post Office Box 1519
Easton, Maryland 21601
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Attorney for Petitioner

Aappendix

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CIRCUIT COURT FOR DORCHESTER COUNTY

Case No. 7547

CRIMINAL DOCKET

STATE OF MARYLAND

v.

JOHN McGINNIS

1992, Feb 28th, Line to Clerk to Enter of Robert S. Collison, Esq. as Counsel for Deft.

...

...

1992, June 2nd, Pst. in Ct.: Robert Collison, Esq., counsel for deft,: Maurice Nelson, Asst. State's Atty.; Joyce Hart, Ct. Rpt.; Joyce Marshall, Ct. Clk.; Judge Richard D. Warren Presiding.
State makes Mt. for Continuance.
No objection by deft.
Mt. gtd. Mts. and trial to be heard on same date.
JUDGE: WARREN, Richard D.
1992, June 4th, Notice of Re-Assengment to parties of Mts. and trial 7/28/93, 9:30 a.m., fd.

...

...

1992, July 28th, Pst. in Ct.: Robert Collison, Esq. representing John McGinnis; Maurice Nelson, Asst. State's Atty.; Joyce

Hart, Ct. Rpt.; Charlene McWilliams, Ct. Rm. Clk.; Judge Richard D. Warren presiding.
Case continued due to pending Jury trial in progress.
1992, Aug. 10th, Notice of Re-Assignment to parties of Mts. and Jury Trial 9/29/92, 9:30 A.M., fd.
...
...

1992, Sept. 29th, Pst. in Ct.: John McGinnis w/counsel Robert Collision, Esq.; Maurice Nelson, Asst. State's Atty.; Joyce Hart, Ct. Rpt.; Joyce Marshall, Ct. Clk; Judge Richard D. Warren presiding.
Hearing held on Mt. to Dismiss
Deft.'s Mt. to Dismiss is denied.
JUDGE: WARREN, Richard D.
Deft.'s Mt. to dismiss due to lack of speedy trial (trial not being held within 180 days.
Ct. finds good cause was shown for continuance in this case. Mt. denied.
JUDGE: WARREN, Richard D.
Trial.
Ct. finds deft. guilty as to Not Registering Rental Units.
Ct. orders deft. pay fine of $150.00 and court costs.
Ct. orders deft. be fingerprinted.

TRANSCRIPT

MR. COLLISON: That's correct.

THE COURT: All right.

MR. COLLISON: 180 days would have expired approximately August 28th.

THE COURT: Are you making a motion to dismiss on that ground, are you?

MR. COLLISON: That's correct, Your Honor. There was one continuance on June 2nd, Your Honor, at the state's --

THE COURT: And I'm going to have to ask you again, to make clear on the record, are you making a motion to dismiss because of a constitution of defamation of right to speedy trial, or are making a motion to dismiss on violation of the 180 day requirement?

MR. COLLISON: 180 day requirement, Your Honor.

THE COURT: That's simply a question of whether 180 days have passed by or whether there has been continuance for good cause, right?

MR. COLLISON: Correct.

THE COURT: You say the 180th day expired on August 28th?

MR. COLLISON: Correct.

THE COURT: Do you agree with that?

MR. NELSON: Your Honor, I don't have this entry in front of me. I don't --

THE COURT: That may be is a little hard -- I suppose it may be though, let's see. Your appearance was entered February 28th?

MR. COLLISON: That's correct, Your Honor.

THE COURT: Okay, so it was. Not that this is going to make a whole lot of difference, but perhaps you are right about the time.

That would appear to be correct. Now let's see what happened. August 28th -- on July 28th the case was called for trial, everybody was present, the case was continued because at that time there was a jury trial that had already begun and was in progress.

MR. COLLISON: That's correct, Your Honor.

THE COURT: At the time, of course, the 180 days had not yet expired, so I don't know, there's no docket entry that indicates, but I don't know whether there was a finding at that time that that was a good cause for extending the case beyond the 180 days. That was

approximately 60 days ago, but there, certainly, has not been an inordinate postponement beyond that.

Do you agree to be heard whether that was good cause for continuance?

MR. COLLISON: I would argue Your Honor. I believe the Court would have had a month to have set it in to and to adhere to the 180 day rule, had it been set.

trial and elects trial by jury then he elected trial by Court.

On May 29th you filed this motion to dismiss, raising constitutional arguments concerning the statute, State asked for a continuance because it had not yet had an opportunity to provide an answer to your motion.

So to some extent the first continuance was triggered by an act or

action on the part of the defendant which was reasonable to expect would probably trigger a continuance.

Nevertheless, it did not mean it necessarily pushed the case beyond the 180 days, in fact, it didn't, the case was rescheduled for trial on July 28th, was continued at that time because the Court was unable to get to the case because there was a jury trial that was in progress, and, apparently, not anticipated to be completed. I don't know which case that was, but the Court finds that was good cause for continuance, and that the resetting of the case within 60 days thereafter was with good cause.

The motion is denied.

MR. NELSON: The State calls Nick Lyons.

Whereupon,

NICK LYONS,

it is a mathematical certainty or beyond all possible doubt. There are inferences that can be drawn by items and -- testimony.

The Court entertains no reasonable doubt whatever that this property was owned by Mr. McGinnis either solely or jointly with another person, makes no difference, there were three dwelling units as defined in the Code contained in that building, that they were all non-owner occupied rental units. They were all required to be registered under the Code and Mr. McGinnis knew that they were required to be registered under the Code, and willfully failed to do so.

I find him guilty as charged. Care to be heard on disposition?

MR. NELSON: Just briefly, Your Honor. Under 110-13A there is a provision that the fine shall be $500 for each day the violation exists. The charging document essentially charges a violation of 28 days.

It would be the State's recommendation that the defendant be fined for one day per each unit, and therefore the State would recommend a fine of $15.

The State notes, Your Honor, in disposition as well that on terms of this case, there is in the State's mind an abundance of evidence that this is an election by the defendant not to abide by a regulation of the County.

JOHN McGINNIS	:	In the
Appellant	:	Court of Special Appeals
v.	:	No. 1989
State of Maryland	:	September Term, 1992
Appellee		

ORDER

It appearing from the record that the captioned appeal was noted to this Court improperly from a judgment of the Circuit Court for Dorchester County made in the exercise of appellate jurisdiction in reviewing the decision of the District Court,

It is, therefore, this 23rd day of February, 1993, by the Court of Special Appeals, on its own motion,

ORDERED that the captioned appeal be transferred to the Court of Appeals of Maryland. Courts Article, Section 12-

302(a), Maryland Rule 8-132.

ALAN M. WILNER
Chief Judge-

JOHN McGINNIS	:	In the
	:	Court of Appeals
	:	of Maryland
v.	:	Petition Docket No. 759
STATE OF MARYLAND	:	September Term, 1992
	:	No. 7547, Circuit Court for Dorchester County

ORDER

Upon consideration of the petition for a writ of certiorari and supplement to the Circuit Court for Dorchester county in the above entitled case, it is

ORDERED, by the Court of Appeals of Maryland, that the petition and supplement be, and they are hereby, denied as there has been no showing that review by certiorari is desirable and in the public

interest.

/S/ ROBERT C. MURPHY
Chief Judge

Date: June 24, 1993

CERTIFICATE UNDER RULE 28

This is to certify that because U.S.C. Section 2403(b) may be applicable three copies of thee foregoing Petition for Writ of Certiorari were mailed, ordinary mail, postage prepaid, on August 20, 1993, to the Honorable J. Joseph Curran, Jr., Attorney General for Maryland at his offices as 200 St. Paul Place, Baltimore, MD 21202.

Waller S. Hairston

Waller S. Hairston